

### **Remarks**

Applicants gratefully acknowledge the Examiner's withdrawal of the rejection under 35 U.S.C. § 112, 1<sup>st</sup> paragraph in the August 31, 2006 Final Office Action. The foregoing amendments and following remarks are responsive to the August 31, 2006 Final Action and December 20, 2006 Advisory Action.

### **Status of the Claims**

Claims 41 and 56 are amended. Claims 42 and 55 are cancelled without prejudice. Claims 49-52 were cancelled previously. Claims 41, 43-48, 53-54 and 56-60 are pending.

### **Support for Amendments**

Support for the amendments to Claims 41 and 56 is found on page 3, lines 26.

### **Information Disclosure Statement (IDS)**

The Examiner is respectfully requested to consider the Bruchausen reference which is concisely and adequately described in the specification on page 6, lines 3-11. A Supplemental PTO-Form 1449 listing the Bruchausen reference (including the page and line numbers in the specification) is provided for the Examiner's convenience.

The Examiner is respectfully requested to initial, date, and return a copy of the enclosed PTO-Form 1449 to the undersigned.

### **Rejections under 35 U.S.C. § 102(e)**

Claims 41, 43-44, 54, 57 and 59-60 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,090,875 (Miyazaki). Claim 41 (from which Claims 43-44, 54, 57 and 59-60 depend) is amended to clarify the invention.

Miyazaki relates to a microorganism that reacts with a bean extract to produce a fermented product for a skin preparation. Miyazaki discloses that there are no specific limitations to the bean extracts used to obtain the fermented product. Miyazaki also discloses that there are no specific limitations to the microorganisms that may be used.

Among the numerous microorganisms disclosed by Miyazaki (col. 3, line 62 to col. 4, line 23), the three specific microorganisms of Claim 41, namely, *Lactobacillus*, *Lactococcus* and *Leuconostoc*, may be found, in addition to the Genus *Monascus*. The microorganisms of Miyazaki may be combined with nutritive substances, including yeast extracts (col. 4, lines 42-46), and added to a bean extract prior to fermentation. Miyazaki does not disclose rice plants or rice extract.

For a reference to anticipate, every element of the claimed invention must be identically shown in the reference. Miyazaki fails to disclose rice plants or rice extract. Therefore, Miyazaki does not anticipate the invention, and the rejection should be withdrawn. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejections under 35 U.S.C. § 103(a)

Claims 41-48, 53-54 and 56-60 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Miyazaki in view of U.S. Patent No. 6,632,428 (Zhang). Claim 42 is cancelled, rendering the rejection moot. Claim 41 (from which Claims 43-48, 53-54, 57 and 59-60 depend) and Claim 56 (from which Claim 58 depends) are amended to clarify the invention.

The arguments made against the rejection under 35 U.S.C. § 102(e) with regard to the inapplicability of Miyazaki are reasserted as if set forth at length for reasons set forth above, and for reasons which follow.

Zhang relates to a fermentation process using a specific strain of *Monascus* to obtain red rice. Zhang uses a media preparation including (1) rice (or another grain) as a carbon source, and (2) beans (or rice extract powder) as a nitrogen source. The preparation has a pH of 3-8, is steam sterilized at 121°C., cooled to 40°C., and inoculated with a specific strain of *Monascus*. Fermentation is carried out at a temperature of 15-35°C for over 4 days. Zhang does not disclose inoculating the fermentation broth with a mixture of organisms comprising at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast.

Presuming, *arguendo*, that the references disclose the components as suggested by the Examiner, there is no reasoning provided why one skilled in the art, after reading

Miyazaki and Zhang, would be motivated to pick and choose among the various components to arrive at the claimed processes of Claims 41 and 56 with any reasonable expectation of success, absent Applicants' disclosure. For example, there is no reasoning provided why one skilled in the art would be motivated to (1) substitute a rice product of Zhang for the bean product used in Miyazaki, (2) select the three specific claimed microorganisms from among the numerous microorganisms disclosed in Miyazaki, and (3) include at least one yeast to arrive at the process of Claim 41.

Both Miyazaki and Zhang disclose the Genus *Monascus*. Miyazaki discloses *Monascus* as a suitable microorganism which may be selected among numerous microorganisms for fermenting the bean product. Zhang discloses a specific strain of *Monascus* which is used to ferment rice. Presuming, *arguendo*, that one skilled in the art were to select rice and subject the rice to the Miyazaki fermentation process as suggested by the Examiner, there is no teaching, suggestion or motivation provided by Miyazaki or Zhang to select the three specific microorganisms of Claim 41 and 56 out of the numerous organisms, including *Monascus*, disclosed by Miyazaki. Therefore, one of ordinary skill in the art would not have been led by Miyazaki or Zhang, either individually or in combination, to inoculate a rice fermentation mixture with the claimed combination of components, namely, at least one *Lactobacillus*, at least one *Lactococcus*, at least one *Leuconostoc* and at least one yeast to produce an active component with any reasonable expectation of success, absent Applicants' disclosure.

Thus, the claimed combination of components in the process would not be apparent to one of ordinary skill in the art as alleged, because the cited references fail to provide the motivation to the skilled worker to combine them with a reasonable expectation of success in producing the invention. Since it would not have been obvious to one skilled in the art to substitute or select among the various elements of the references with any reasonable expectation of success, the combination of references and the reasons provided by the Examiner are insufficient to support a *prima facie* case of obviousness, and the rejection should be withdrawn. Reconsideration and withdrawal of the rejection are respectfully requested.

Advisory Action

Applicants object to the refusal by the Examiner to enter the proposed amendments in the November 29, 2006 Reply. The Advisory Action indicated that amending the claims to specifically include rice would require further consideration. Applicants, however, had elected rice in the February 17, 2006 Reply to the January 19, 2006 Requirement for Restriction. It was presumed the Examiner had already considered the species in rendering the August 31, 2006 Action. Clarification is respectfully requested.

Fees

A Petition for a Two-Month Extension of Time and requisite fee are enclosed. No additional fees are believed due, but the Commissioner is authorized to charge any fees deemed due (or credit any balance owing) to Deposit Account No. 50-1177.

Conclusion

It is respectfully submitted that Claims 41, 43-48, 53-54 and 56-60 are in condition for allowance. A Notice of Allowance is respectfully requested. If anything further is needed to advance the allowance of this application, the Examiner is urged to contact Applicants' attorney at the telephone number indicated below.

Respectfully submitted,

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Date



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